

STATE OF MICHIGAN

FRANK J. KELLEY, ATTORNEY GENERAL

PLANT REHABILITATION AND
INDUSTRIAL DEVELOPMENT DISTRICTS: Eligibility of facility
for designation by city
as a district

WORDS AND PHRASES: "Industrial property"

A proposed facility which will produce steam and electricity is not an "industrial property" for the manufacture of goods and materials listed in Division D of Standard Industrial Classification Manual 1972 for the purposes of 1974 PA 198, and the facility is ineligible for designation by a city as a plant rehabilitation or industrial development district.

Opinion No. 6473

October 7, 1987

Honorable John M. Engler
Senate Majority Leader
The Capitol
Lansing, Michigan 48909

You have requested my opinion "regarding the eligibility of the Midland Cogeneration Venture for designation as a plant rehabilitation and industrial development district under PA 198 of 1974."

The attachment to your letter of request relates that CMS Midland, Inc. and MEC Development Corporation have petitioned the City of Midland to establish a plant rehabilitation and industrial development district. The Midland Cogeneration

Venture Limited Partnership, comprised of CMS Midland, Inc. and MEC Development Corporation, plus other entities, intends to construct a 1350 MW natural gas-fired, combined-cycle generating facility within the proposed district. An annual average of 500,000 lb/hr of process steam and 60 MW of electricity from such facility will be supplied to the Michigan Division of The Dow Chemical Company, and the facility will sell significant amounts of electric capacity and energy to Consumers Power Company.

The petition indicates that the proposed facility would be constructed for the primary purpose of producing steam and electricity to supply to The Dow Chemical Company and for sale to Consumers Power Company.

The Legislature has empowered cities to establish a plant rehabilitation and industrial development district "upon written request filed by the owner or owners of 75% of state equalized value of the industrial property located within a proposed plant rehabilitation district or industrial development district." (Emphasis added.) 1974 PA 198, § 4(2); MCL 207.554(2); MSA 7.800(4)(2).

Upon establishment of the district, the owner or lessee of the facility may apply for an industrial facilities exemption under 1974 PA 198, § 5; MCL 207.555; MSA 7.800(5), which if granted, exempts the facility, but not the land upon

which it is located, from ad valorem real and personal property taxes. 1974 PA 198, § 8; MCL 207.558; MSA 7.800(8).

The Legislature has defined "industrial property," for purposes of 1974 PA 198, in § 2(6); MCL 207.552(6); MSA 7.800(2)(6), as follows:

"'Industrial property' means land improvements, buildings, structures, and other real property, and machinery, equipment, furniture, and fixtures or any part or accessory thereof whether completed or in the process of construction comprising an integrated whole, the primary purpose and use of which is the manufacture of goods or materials or the processing of goods and materials by physical or chemical change; . . . Industrial property shall include facilities related to a manufacturing operation under the same ownership, including but not limited to office, engineering, research and development, warehousing, or parts distribution facilities. Industrial property shall also include research and development laboratories of companies other than those companies which manufacture the products developed from their research activities and research development laboratories of a manufacturing company that are unrelated to the products of the company. Industrial property shall not include any of the following:

"(a) Land.

"(b) Property of a public utility other than a nonprofit cooperative power corporation as described in this section.

"(c) Inventory.

"Industrial property may be owned or leased if, in the case of leased property, the lessee is liable for payment of ad valorem property taxes and furnishes proof of that liability." (Emphasis added.)

The Legislature has, in 1974 PA 198, § 2(10), MCL 207.552(10); MSA 7.800(2)(10), defined the term "manufacture

of goods or materials" as used in the Act:

"'Manufacture of goods or materials' or 'processing of goods or materials' means any type of operation that would be conducted by an entity included in the classifications provided by division D, manufacturing, of the standard classification manual of 1972, published by the United States office of management and budget, regardless of whether the entity conducting such an operation is included therein."

Division D, Manufacturing, Executive Office of The President - Office of Management and Budget, Standard Industrial Classification Manual 1972 (Washington, DC: United States Government Printing Office 1972), pp 57-218, does not include the establishments engaged in the production of steam and/or electricity. Rather, the standard classification manual lists "electricity" and "steam" establishments in Division E, Transportation, Electric, Gas and Sanitary Services.

It is noted that the Application of the Midland Cogeneration Venture Limited Partnership for approval of capacity charged filed before the Michigan Public Service Commission, Case No. U-8871, contains a copy of the Power Purchase Agreement between Consumers Power Company and Midland Cogeneration Venture, Limited Partnership, p 43, which, in pertinent part, states:

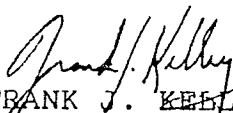
"It is the intent of the Parties that this Agreement shall be treated as a service contract."

The proposed facility is not an "industrial property," the primary purpose and use of which is the manufacture of

goods or materials, and does not meet the definition of "industrial property" as adopted by the Legislature in 1974 PA 198.

In light of the conclusion that the proposed facility is not an "industrial property," it is unnecessary to consider the question whether Midland Cogeneration Venture is a "public utility."

It is my opinion, therefore, that a facility which is not an "industrial property," the primary purpose of which is the manufacture of goods or materials, is ineligible for designation by a city as a plant rehabilitation or industrial development district under 1974 PA 198.


FRANK J. KELLEY
Attorney General